

U.S. Pat App. No. 10/700,216
Amendment A in response to
Office Action mailed 12/20/2006
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Atty Dkt No. 200309945-1

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Remarks/Arguments

Applicant wish to thank the Examiner for the careful review of the claims, specification and drawings.

Claims

Claim 15 has been amended.

After entry of this amendment, claims 15-20 are pending.

It is respectfully submitted that each and every feature recited in the amended claims is fully supported in the specification as filed. No new subject matter has been added.

Rejections under 35 USC § 101

The Office Action argues that claims 15-20 are rejected under 35 USC § 101 as being directed to Computer-Related Nonstatutory Subject Matter.

The Office Action argues that

“Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure’s functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized, and is thus statutory.”

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Applicant hereby amend claim 15, as follows:

15. (Currently amended) An article of manufacture comprising a program storage medium having computer readable code embodied therein, said computer readable code being configured to enable selective

discarding of messages received at a receiving device coupled to a telecommunication network, comprising:

code for ascertaining whether a type associated with a received message at said receiving device is one of protected message types; and
code for passing, if said type associated with said received message is said one of said protected message types, said received message to an application irrespective of an age of said received message, said age being representative of a time duration that said message has been present in said receiving device, wherein said computer readable code embodied in said article of manufacture is configured to be executed in at least one computer system to relieve message congestion at said receiving device.

Specifically, Applicant amends claim 15 to recite that the computer readable code embodied in the article of manufacture comprising a program storage medium is configured to be executed in at least one computer system to relieve message congestion at said receiving device. Support for the amendment can be found, for example and without limitation, in paragraphs 24 and 25 in the specification as filed.

Applicant also respectfully submits that claims 15-20 are now statutory claims per MPEP 2106 (I) which states, "a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory".

It is also respectfully submitted that the remaining claims that depend from the amended claim 15 are also statutory and patentable not only due to their recitation of independently patentable features but also due to their dependence from the parent amended claim 15.

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Conclusion

In view of the discussion herein, Applicant believes that all pending claims are allowable and respectfully request a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application; the undersigned can be reached at 408-257-5500.

If any additional petition is required to facilitate the entry of the present amendment, please consider this communication a petition therefore as well. The Commissioner is authorized to charge any fees beyond the amount enclosed which may be required, or to credit any overpayment, to Deposit Account No. 50-2284 (Order No. 200309945-1).

Respectfully submitted,

/Joseph A. Nguyen/ #37,899

Joseph A. Nguyen